

## **Rule 39, Victims' Rights**

### **STATE'S MOTION FOR ORDER REQUIRING DEFENDANT TO BE TESTED FOR THE HUMAN IMMUNODEFICIENCY VIRUS**

Under A.R.S. § 13-1415, on the State's petition and the victim's request, a trial court may order a defendant to submit to a test to determine if he has the Human Immunodeficiency Virus, if the defendant has been charged with "a sexual offense or another offense involving significant exposure." However, the statute also allows testing in cases in which there was no "significant exposure," as that term is defined in the statute, as long as the defendant's acts potentially exposed the victim to the virus.

The State of Arizona, by and through undersigned counsel and at the request of the victim, requests this Court to issue an order requiring the defendant to be tested for the Human Immunodeficiency Virus [HIV]. This motion is supported by the attached Memorandum of Points and Authorities.

#### **MEMORANDUM OF POINTS AND AUTHORITIES**

##### **Facts:**

The defendant in this case has been charged with two counts of Aggravated Assault, Class 5 felonies, both committed against the same victim, Maricopa County Sheriff's Deputy H. B. The offenses occurred on January 13, 1997, while Deputy B. was acting in an official capacity in Judge Mangum's court. The defendant spat in Deputy B.'s face several times while the defendant was appearing before Judge Mangum regarding CR 96-10620, in which he was charged with sexual assault. Deputy B. suffered exposure to the defendant's saliva in or near his eyes, nose, and mouth. Deputy B. has now asked the State to seek to have the defendant tested for HIV.

**Law:**

A.R.S. § 13-1415<sup>1</sup> provides for HIV testing of certain defendants charged with sexual offenses or other offenses that could expose victims to the virus. That statute provides in part:

§ 13-1415. Human immunodeficiency virus testing; victim's rights; petition; definitions

A. A defendant, including a defendant who is a minor, who is alleged to have committed a sexual offense or another offense involving significant exposure is subject to a court order that requires the defendant to submit to a test for the human immunodeficiency virus and to consent to the release of the test result to the victim.

B. Pursuant to subsection A of this section, the prosecuting attorney, if requested by the victim, or, if the victim is a minor, by the parent or guardian of the minor, shall petition the court for an order requiring that the person submit a specimen . . . for laboratory testing by the department of health services or another licensed laboratory for the presence of the human immunodeficiency virus. The court shall, within ten days, determine if sufficient evidence exists that indicates that significant exposure occurred. If the court makes this finding or the act committed against the victim is a sexual offense it shall order that the test be performed in compliance with rules adopted by the department of health services. . . .

\* \* \*

F. Notwithstanding any other law, copies of the test results shall be provided only to the victim of the crime, the person tested, the submitting entity and the department of health services.

G. For the purposes of this section:

\* \* \*

2. "Significant exposure" means contact of the victim's ruptured or broken skin or mucous membranes with a person's blood or body fluids, other than tears, saliva or perspiration, of a magnitude that the centers for disease control have epidemiologically demonstrated can result in transmission of the human immunodeficiency virus.

---

<sup>1</sup> A parallel statute, A.R.S. § 8-341(O), allows HIV testing of certain juvenile offenders.

The State recognizes that A.R.S. § 13-1415(G)(2) defines “significant exposure” to exclude contact with a person’s saliva, so the victim here did not suffer “significant exposure” as that term is defined by statute. However, in *State v. Superior Court*, 187 Ariz. 411, 417, 930 P.2d 488, 494 (1996), interpreting both the parallel juvenile provision<sup>2</sup> and § 13-1415, the Arizona Court of Appeals upheld the constitutionality of A.R.S. § 13-1415 even when no “significant exposure” occurred. In that case the juvenile defendant attempted anal intercourse with the victim and thus *potentially* exposed the victim to the juvenile’s bodily fluids. However, there was no evidence that the victim had actually suffered any “significant exposure” as defined by A.R.S. § 13-1415(G)(2). The juvenile argued that the statute was unconstitutionally overbroad unless authority for HIV testing was limited to cases in which “significant exposure” had actually occurred.

The Court of Appeals disagreed, finding that the defendant’s privacy expectations under the Fourth Amendment are substantially outweighed by the State’s interest in assisting victims by finding out if a defendant is infected with HIV. The Court of Appeals also went on to “reject the suggestion that the statute is overbroad if application is not confined to instances involving ‘significant exposure,’ and we decline to limit permissible testing to cases that meet that standard.” *Id.* at 417, 930 P.2d at 494. The Court held that the juvenile statute “allows a victim to request HIV testing when there has been a **potential** exposure to the perpetrator’s bodily fluids.” *Id.* at 418, 930 P.2d at 495 [emphasis added]. The Court concluded that the statutes allow HIV testing

---

<sup>2</sup> The juvenile HIV testing statute, then A.R.S. § 8-241(N), has since been renumbered as A.R.S. § 8-341(O).

in cases in which the defendant's acts "could have exposed the victim to HIV." *Id.* at 419, 930 P.2d at 496.

The reasoning of *State v. Superior Court*, 187 Ariz. 411, 930 P.2d 488 (App. 1996) is equally applicable to cases involving only adult perpetrators. The defendant's actions here potentially exposed the victim to HIV infection. Therefore, the victim has a right to request that the defendant submit to HIV testing, and has chosen to exercise that right.

### **CONCLUSION**

The defendant's acts in this case could have exposed the victim to HIV, and the victim has requested that the defendant be tested for HIV. Therefore, pursuant to A.R.S. § 13-1415, the State requests this Court to enter such an order..

### **ORDER**

Upon motion of the State pursuant to A.R.S. § 13-1415, and good cause appearing,

**IT IS HEREBY ORDERED** that within 30 days from the date of this order, the Arizona Department of Health Services shall have the defendant tested for the human immunodeficiency virus. The Department of Health Services shall then notify the victim of the result of such test. The victim's address will be on file with the Maricopa County Attorney's Office.